IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.359 OF 1993.

The State of Maharashtra
(Through the Special Land
Acquisition Officer, Metro
Centre No.II, Thane) : Appellant.

versus

Arvind Khanderao Vaidya & ors : Respondents.

Mr.S.N.Gawade, AGP, for the appellant.
None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 10th January 2005.

ORAL ORDER

1. Heard the learned AGP for the State. Nobody is present for the respondents. This appeal has been filed by the State challenging the order of the Joint District Judge, Thane in L.A.R. No.97 of 1986 granting compensation to

the Respondents at the rate of Rs.15/- per sq.metre. The SLAO has granted compensation at the rate of Rs.8.50 per sq.mtr. The respondents filed a Reference claiming compensation at the rate of Rs.25/- per sq.mtr.

2. According to the AGP, grant of compensation at the rate of Rs.15/- per sq.mtr is without any basis and support. He therefore tried to assail the order of the lower Court.

3. The land of the claimants acquired in this case is 1492 sq.mtrs. The land is situated at Sanpada village which is 10 kms. away from Thane and 1 km. away from Vashi Bridge. Admittedly, there is a Thane Belapur Road running North-South and Sion Panvel Highway meets Thane Belapur road near village Sanpada i.e. village Sanpada is on the western side of Thane Belapur road, and southern side of Sion Panvel Highway at a short distance of about 100 ft. The lands lying to the eastern side of Thane Belapur road from all the villages in Thane Taluka were acquired in the year 1964 for the purpose of MIDC and large and medium scale industries were established in these lands.

4. Notification under Section 4 of the Land Acquisition Act was published on 10.10.68 and it was followed by the notifications of the said Act. The claimants appeared before the SLAO and prayed compensation at the rate of Rs.20/- per sq.mtr. No sale instances were available even for the SLAO. Therefore, considering the background note on valuation, he fixed the value of the land at the rate of Rs.8.50 per sq.mtr. The claimants have claimed compensation of Rs.1,50,000/- for the house structure standing in the acquired land. But the claim was rejected by both the SLAO and the lower Court because the house was constructed after the publication of the notification under Section 4 of the Land Acquisition Act and Section 24 of the Land Acquisition Act specifically prohibits the Court in taking into consideration any improvements made on the acquired land after the notification under Section 4.

5. The learned AGP has contended that grant of compensation by the lower Court at the rate of Rs.15/- per sq.mtr. is without any basis. But I

do not find that this contention can be accepted. Firstly because even for fixing the market value of the acquired land the SLAO did not have with him any sale instance. This is the finding of the lower Court in para 4 of the impugned judgment. Therefore, the SLAO has fixed the compensation at the rate of Rs.8.50 per sq.mtr on the basis of some notes and, as against this claimants have relied upon certain orders particularly Exhibit 15 which is a certified copy of the judgment in LAR 67/85. In that case, the lands involved were from village Sanpada and near the Sion Panvel Highway and Thane Belapur road and, therefore, the lower Court relied upon this judgment Exhibit 15 for holding that the claimants were entitled for compensation at the rate of Rs.15/- per sq.mtr.

6. Admittedly, the land of the claimants was very near to both the roads i.e. Sion Panvel Highway and Thane Belapur road. It was hardly at a distance of 100 ft. from Sion Panvel Highway and, therefore, in these circumstances, if the trial Court relied upon Exhibit 15 while granting the compensation at the rate of Rs.15/- per sq.mtr., then no fault is to be found with. The

Court has observed, "So considering the location of the lands involved in this land reference and the admitted facts, i.e. industrial development in the vicinity of the land involved etc., there is reason to believe that the market value of the acquired lands involved in the present reference fixed at Rs.8.50 per sq.mtr was not the market value prevailing on the crucial date 10.10.68, and it is too low, inadequate and unreasonable. In these circumstances and particularly when the respondents before the SLAO and lower Court could not show any sale instance where the land in Sanpada Village abutting the road was sold for Rs.8.50 sq.mtr, the judgment of the lower Court is required to be upheld. Hence the Appeal is dismissed with no order as to costs.

[D.G.DESHPANDE]

10/01/2005 JUDGE.